

Maritime Administration, DOT

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b. With respect to interlocutory decisions of the Maritime Subsidy Board in actions or proceedings referred to in paragraphs .01 and .02 of this section.

.06 The Secretary may, for good cause and/or in order to prevent undue hardship in any particular case, waive or modify any procedural provision of this section by written order.

§ 202.2 Time and place for filings.

All petitions, requests and replies relating to Secretarial review of Maritime Subsidy Board actions shall be filed with the Office of the Secretary of Transportation, Department of Transportation. Such papers shall be filed in accordance with the provisions of and within the time periods prescribed by Department Order 117-A.

§ 202.3 Form of petitions, requests and replies.

(a) All papers presented to the Secretary, other than records, shall bear on the cover the name and post office address of the party, and the name and address of the principal attorney or authorized representative (if any) for the party concerned. Certification shall be made that service of the paper has been made upon all parties of record (if any) and upon the Secretary of the Maritime Subsidy Board. One copy of every paper filed with the Secretary must in addition bear at its close the hand written signature of the party or attorney.

(b) All papers presented to the Secretary, other than records, shall, unless they are fewer than 10 pages in length, be preceded by a subject index of the matter contained therein, with page references, and a table of the cases (alphabetically arranged), textbooks, statutes and other material cited, with references to the pages where they are cited.

(c) Whenever a reference is made to a transcript, exhibit or other part of the record, such reference must be accompanied by a specific citation identifying the document and indicating the relevant page number of the document concerned.

(d) Papers filed with the Secretary should be logically arranged, with proper headings, concise, and free from irrelevant and unduly repetitious matter.

(e) It will not be necessary to reproduce the opinion of the Board.

§ 202.4 Petitions and requests for review—content.

Petitions and requests for review shall contain in the order here indicated—

(a) A reference to the decision, report, order or action of the Board;

(b) A concise statement of the interest of the party submitting the paper;

(c) A concise summary statement of the case containing that which is material to the consideration of the questions presented;

(d) A listing of each of the grounds upon which the party seeking review relies, expressed in the terms and circumstances of the case, each ground set forth in a separate, numbered paragraph;

(e) The argument, generally amplifying the material in paragraph (d) of this section and exhibiting clearly the points of law, policy and fact being presented, citing the authorities, statutes and other material relied upon. The argument should separately identify and treat each of the grounds upon which review is sought. In cases where reversible legal error is contended, a full legal argument on the points concerned should be presented. In cases where policy error is contended, it should be pointed out what policy of the Board is alleged to be wrong, what is wrong with it and what policy the submitting party advocates as the correct one. In cases where reversible factual error is contended, the findings of fact alleged to be erroneous should be pointed out along with citations to the record where appropriate. The party should further indicate precisely what it contends to be the correct findings of fact, with supporting references;

(f) A conclusion, specifying with particularity the action which the submitting party believes the Secretary should take.

§ 202.5 Replies and requests that review not be exercised—content.

Replies and requests that review not be exercised shall contain in the order here indicated—

(a) A reference to the decision, report, order, or action of the Board;

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(b) A concise statement of the interests of the party submitting the paper;

(c) Where deemed necessary by the submitting party, a concise summary statement of the case explicitly pointing out any inaccuracy or omission in the statement of the other side, with references to the record where appropriate;

(d) A listing of the reasons why review should not be exercised, each reason set forth in a separate, numbered paragraph;

(e) The argument generally amplifying the material in paragraph (d) of this section and, in addition, specifically replying to the points of law, policy and fact presented by the other side (each stated separately) citing the authorities, statutes, and other material relied upon by the submitting party;

(f) A conclusion, specifying with particularity the action which the submitting party believes the Secretary should take.

§ 202.6 Grant or denial of review.

(a) A petition or request for review by the Secretary of any decision, report, order or action of the Board will not be granted unless significant and important questions of over-all policy requiring the Secretary's attention are involved or there appears to be significant legal, policy, or factual error in the Board's action.

(b) The parties and the Secretary of the Board will be notified, by Order, of the Secretary's decision to review a case on his own motion, and of his decision to review or to deny review of a case where a petition or request concerning review has been filed.

(c) Promptly upon notice of a decision by the Secretary to review a case subject to review under section 6.01 of Department Order 117-A, the Secretary of the Board shall certify to the Secretary the complete record of the proceeding before the Board and shall serve upon all parties a copy of such certification which shall adequately identify the matter so certified. The Secretary of the Board shall further serve upon all parties a copy of any further communication from the Board or Maritime Administration on such a case.

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§ 202.7 Supplemental briefs.

If an order taking review is entered by the Secretary, further briefs supplementing the arguments set forth in the petitions and replies may be requested in cases where the Secretary deems such to be appropriate and desirable.

§ 202.8 Oral argument.

Generally, oral argument will not be necessary. However, the Secretary reserves the right to schedule such when he deems it desirable.

§ 202.9 Decisions by the Secretary of Transportation.

Decisions of the Secretary will be reached in accordance with applicable law and the evidence. Upon the determination of a case taken under review by the Secretary, a written decision and opinion which states the Secretary's conclusions and an explanation thereof will be issued.

§ 202.10 Petitions for reconsideration.

Petitions for reconsideration of decisions by the Secretary in any case taken under review will be considered, upon a showing of good cause, if filed within ten (10) days of service of the Secretary's decision.

§ 202.11 Ex parte communications.

Oral or written communications with the Department concerning a matter subject to Secretarial review under section 6.01 of Department Order 117-A, unless otherwise provided by law or by order, rule, or regulation of the Department, shall be deemed ex parte communications and shall not be part of the record and shall not be considered in making any recommendation, decision or action; *Provided, however,* That this rule shall not apply to customary informal communications with Department counsel, including discussions directed toward the development of a stipulation or settlement between parties; communications of a nature deemed proper in proceedings in U.S. Federal courts; and communications with Department counsel which merely inquire as to procedures or the status of a proceeding without discussing issues or expressing points of view. Any